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U.S. Department
of Transportation

Research and
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400 Seventh Street, S.W.
Washington, D.C. 20590

MAY 30 2000

Mr. Todd Nash
1715 Whispering Forest Drive, #307
Charlotte, NC 28270

Ref. No. 00-0109

Dear Mr. Nash:

This is in reference to your April 11, 2000 letter and telephone conversation with Ms. Diane LaValle of my staff concerning the responsibility of a carrier under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask about the penalties associated with a common carrier who picks up a package for transportation by highway which is in violation of the HMR, transports it to a central processing facility where an audit at the carrier's facility reveals that a violation of the HMR exists. The carrier then transports the package back to the offeror without rectifying the violations.

Section 171.2(a) states that no person may offer or accept a hazardous material for transportation unless the package conforms to the applicable regulations in the HMR. Generally, an offeror of the hazardous material must sign a certification statement as required by § 172.204(a). As stated in the enclosed formal interpretation published in the Federal Register on June 4, 1988, (63 FR 30411) a carrier violates the HMR when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material which has not been prepared in accordance with the applicable requirements of the HMR. The formal interpretation also clarifies carrier responsibility and the issue of "knowingly and willfully" violating the HMR. A carrier may not accept or transport, including continuing to transport, a package which is not in compliance with the HMR.

I hope this satisfies your request.

Sincerely,

Delmer F. Billings
Chief, Standards Development
Office of Hazardous Materials Standards

Enclosure



000109

1715 Whispering Forest Drive, #307
Charlotte, NC 28270

April 11, 2000

Ms. Diane LaValle
U.S. Department of Transportation
Research & Special Programs Administration (DHM-10)
400 7th Street, S.W.
Washington, DC 20590-0001

Re: Shipper and Carrier Co-Responsibility

Dear Ms. LaValle:

Per our telephone discussion today, I am requesting an official letter of interpretation from your office on the following scenario.

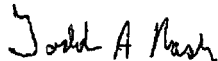
A shipper prepares a hazardous materials package for shipment via a common carrier. The common carrier picks the package up at the shippers facility. The carrier proceeds to transport the package to a central processing facility where it is audited for compliance with the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). If a violation of the HMR is detected by the carriers auditors, the package is rejected. The carrier then attaches a rejection checklist outlining the violations and transports the package back to the shipper on the common carrier vehicles.

According to §171.1(a)(1), the HMR apply to the offering and transportation of hazardous materials in interstate, intrastate and foreign commerce by rail car, aircraft, motor vehicle, and vessel. Furthermore §171.1(c) states that any person who knowingly violates a requirement of the HMR is liable for a civil penalty of not more than \$27,500 and not less than \$250 for each violation. Any person who willfully violates a provision of the Federal hazardous material transportation law or an order or regulation issued thereunder shall be fined under Title 18, United States Code, or imprisoned for not more than 5 years, or both.

Therefore, would it be correct to state that the common carrier in the scenario has joint responsibility with the shipper to ensure the safe transportation of the hazardous materials package? If so, would it also be correct to state that the common carrier in the scenario is knowingly and willfully violating provisions of the HMR? Does the carrier need to correct the violations prior to continuing transportation of the package?

I look forward to your response. Should you have any questions or require additional information, please do not hesitate to contact me at (704) 844-9376.

Very truly yours,



Todd A. Nash